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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
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12 UNITED STATES OF AMERICA,

13 Plaintiff,

14 v.

15 FRANCISCO CASTANEDA,

16 Defendant.
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Cr. No. 2:03-0549-1 WBS

ORDER RE: MOTION TO REDUCE
SENTENCE PURSUANT TO 18 U.S.C. §
3582 (c) (2)

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19 Before the court is defendant Francisco Castaneda's
20 Motion for a sentence reduction pursuant to 18 U.S.C. §
21 3582(c)(2) ("section 3582(c)(2)") and Amendment 782 to the United
22 States Sentencing Guidelines ("Guidelines"). (Def.'s Mot.
23 (Docket No. 225).) The court held oral argument on the Motion on
24 September 11, 2017.

25 On February 23, 2005, a jury found defendant guilty of
26 conspiracy to distribute and possess with intent to distribute
27 cocaine base and cocaine in violation of 21 U.S.C. § 841 and 846
28 and possession with intent to distribute cocaine base in

1 violation of 21 U.S.C. § 841(a)(1). (See Docket No. 101;
2 Judgment (Docket No. 130).) The United States Probation Office
3 issued a presentence report recommending a total offense level of
4 38 and criminal history category of IV, with a resulting
5 Guidelines sentencing range of 324 to 405 months. (See
6 Presentence Report at 17.) The court adopted the presentence
7 report in full and sentenced defendant to 324 months in prison, a
8 sentence on the low end of the Guidelines range. (See Judgment
9 at 2.)

10 Defendant appealed his convictions and sentence to the
11 Ninth Circuit. (Notice of Appeal (Docket No. 128).) While
12 defendant's appeal was pending, the United States Sentencing
13 Commission ("Commission") promulgated Amendment 706 to the
14 Guidelines, which generally reduced the base offense level of
15 crack cocaine crimes by two levels. See United States v. Sykes,
16 658 F.3d 1140, 1143 (9th Cir. 2011); U.S.S.G. § 1B1.10(d) (noting
17 that Amendment 706 applies retroactively). On remand from the
18 Ninth Circuit, which vacated defendant's original sentence, this
19 court determined defendant's Guidelines sentencing range in light
20 of Amendment 706 to be 262 to 327 months, and sentenced defendant
21 to 262 months in prison, a sentence on the low end of the amended
22 Guidelines range. (See Am. Judgment (Docket No. 181).)

23 Thereafter, the Commission promulgated Amendment 750 to
24 the Guidelines, which further generally reduced the base offense
25 level of crack cocaine crimes by two levels. See United States
26 v. Davis, 739 F.3d 1222, 1224 (9th Cir. 2014); U.S.S.G. §
27 1B1.10(d) (noting that Amendment 750 applies retroactively).
28 After defendant moved for a sentence reduction based on Amendment

1 750, the court found defendant's Guidelines sentencing range in
2 light of Amendment 750 to be 210 to 262 months.¹ (See Mar. 7,
3 2013 Order at 3 (Docket No. 213).) The court declined to grant
4 defendant a sentence reduction, however, citing defendant's
5 "pervasive criminal record," "gang affiliation," "history of
6 involvement with drugs and guns," and "complete lack of remorse"
7 for his crimes. (Id. at 4-5.)

8 In November 2014, the Commission promulgated Amendment
9 782 to the Guidelines, which generally reduced the base offense
10 level of drug crimes listed in the Guidelines drug quantity table
11 by two levels. See United States v. Mitchell, Cr. No. 1:12-0199
12 LJO SKO, 2016 WL 4161082, at *1 (E.D. Cal. Aug. 4, 2016). The
13 Commission voted to make Amendment 782 retroactively applicable.
14 See U.S.S.G., sup. App'x C, amend. 788 (2014); United States v.
15 Navarro, 800 F.3d 1104, 1107 (9th Cir. 2015).

16 Defendant contends that in light of Amendment 782, his
17 Guidelines sentencing range is now 168 to 210 months, though he
18 acknowledges that he is still subject to a statutory minimum
19 sentence of 240 months. (Def.'s Mot. at 5; see also Mar. 7, 2013
20 Order at 3.) Defendant now moves to reduce his sentence to 240
21 months pursuant to Amendment 782 and section 3582(c)(2). (Def.'s
22 Mot. at 6.) The government opposes defendant's Motion. (Gov't's
23 Opp'n (Docket No. 229).)

24 Section 3582(c)(2) allows the court to "reduce the term
25 of imprisonment" of a defendant who was "sentenced . . . based on
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27 ¹ The court also noted that defendant was subject to a
28 statutory minimum sentence of 240 months. (See Mar. 7, 2013
Order at 3-4 (Docket No. 213).)

1 a sentencing range that has subsequently been lowered by the
2 Sentencing Commission." 18 U.S.C. § 3582(c)(2). The Supreme
3 Court held in Dillon v. United States, 560 U.S. 817 (2010) that
4 section 3582(c)(2) "establishes a two-step inquiry." Id. at 826.
5 At step one, the court must determine whether a sentence
6 reduction would be consistent with section 1B1.10 of the
7 Guidelines ("section 1B1.10"). Id. "At step two," the court
8 must "consider any applicable [18 U.S.C.] § 3553(a) factors and
9 determine whether, in its discretion, the reduction authorized by
10 reference to the policies [stated in section 1B1.10] is warranted
11 in whole or in part under the particular circumstances of the
12 case." Id. at 827. At step two, the court "shall consider the
13 nature and seriousness of the danger to any person or the
14 community that may be posed by a reduction in the defendant's
15 term of imprisonment," and "may consider [the defendant's] post-
16 sentencing conduct." See U.S.S.G. § 1B1.10, comment. n.1(B).

17 The government concedes, at Dillon step one, that
18 Amendment 782 reduced defendant's Guidelines sentencing range to
19 168 to 210 months, and reducing defendant's sentence to 240
20 months would be consistent with section 1B1.10. (See Gov't's
21 Opp'n at 3.)

22 At Dillon step two, however, the government asks the
23 court to exercise its discretion to deny defendant's Motion. The
24 government notes that the court previously considered whether to
25 exercise its discretion to reduce defendant's sentence pursuant
26 to 18 U.S.C. § 3582(c)(2) and an amendment to the drug quantity
27 table under the factors stated in 18 U.S.C. § 3553(a), and
28 decided that it was not warranted. (See id. at 1-2 (citing Mar.

1 7, 2013 Order at 4-5).) In support of its contention that the
2 court should again exercise its discretion to deny defendant a
3 sentence reduction, the government reiterates that defendant: (1)
4 has a pervasive criminal record that includes four convictions
5 prior to the instant convictions, including one for felonious
6 possession of firearms, (id. at 4; see Presentence Report at 10-
7 12); (2) identified himself as associated with the Nortenos gang,
8 a violent criminal organization, (Gov't's Opp'n at 5 (citing
9 Presentence Report ¶ 27)); (3) has demonstrated a lack of remorse
10 for his crimes by committing the crimes charged in this case
11 while on supervised release for a previous crime, going to trial
12 in this case, and appealing his convictions and sentence, (id.);
13 and (4) has committed a number of disciplinary violations since
14 being imprisoned for the instant crimes, (id. at 5-6).

15 The court notes that defendant was twice given a
16 sentence on the low end of the Sentencing Guidelines, once when
17 he was originally sentenced and again when he was resentenced,
18 and several of the factors identified by the government were
19 already taken into account by his previous and current Guidelines
20 ranges. The court further notes that a mandatory minimum
21 sentence of 240 months would be 52 months above the high end of
22 defendant's current 168-210 month Guidelines range, and that
23 defendant has had no disciplinary issues since 2013.

24 Having considered the applicable factors set forth in
25 18 U.S.C. § 3553(a) and reviewed the entire record in this case,
26 the court finds that 22-month sentence reduction is appropriate
27 for defendant, notwithstanding the court's prior denial of
28 defendant's motion to reduce sentence in 2013.

1 IT IS THEREFORE ORDERED that defendant's Motion for a
2 sentence reduction pursuant to 18 U.S.C. § 3582(c)(2) be, and the
3 same hereby is, GRANTED. Defendant's term of imprisonment shall
4 be reduced to 240 months, effective immediately. All other
5 provisions of the judgment in defendant's case shall remain in
6 effect. The clerk shall forthwith prepare an amended judgment
7 reflecting the above reduction in sentence, and shall serve
8 certified copies of the amended judgment on the United States
9 Bureau of Prisons and the United States Probation Office.

10 Dated: September 11, 2017



11 **WILLIAM B. SHUBB**
12 **UNITED STATES DISTRICT JUDGE**
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